IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 212 of 2003
with
Civil Revision Application No.213 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMDHUN GANGARAM

Versus

ZUBEDABIBI WD/O MOHAMADJI SULTANJI

Appearance:
MR MB GANDHI for Petitioner Nos. 1-2
MRS TRUSHA M GANDHI for Petitioner No. 1-2
..... for Respondent No. 1-2,2/2-2/9
MR DC DAVE for Respondent No. 2/1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioners herein, who are original defendants 1 and 4 in HRP Suit No.2323 of 1976 and

original defendants 1 and 3 in HRP Suit No.3320 of 1976, have filed these Civil Revision Applications, challenging the judgment and order dated 20.2.2003 passed by the appellate Bench of the Small Causes Court in Civil Appeal Nos. 230 of 1981 and 231 of 1981, allowing the appeals and quashing and setting aside the judgment and order dated 2.5.1981 passed by the trial court in the said HRP Suit Nos.2323 of 1976 and 3320 of 1976.

During the pendency of the appeal, the original plaintiffs submitted that the original sub-tenant has further sub-let the property to one Ibrahim Ahmedji and, therefore, the original sub-tenant was deleted from the party array and Ibrahimbhai was added as defendant. After the addition of Ibrahimbhai as one of the defendants, the matter was remanded to the trial court for recording evidence and after recording the evidence, the trial court answered the issue in favour of the plaintiffs.

The respondents are the landlords of property, bearing Survey No.1930 and M.C. 1441, situated at Jamalpur, in the City of Ahmedabad. They filed HRP Suit No.2323 of 1976 for getting a decree for possession of the first floor of the above property. HRP Suit No.3320 of 1976 was instituted for getting a decree for possession of the ground floor of the above property. The said suits were instituted on the grounds of arrears of rent, sub-letting, change of user, etc.

The defendants filed written statements denying all the averments contained in the plaint of the respondents. They contended that the suit premises were let out for the purpose of residence and business.

The trial court framed various issues. Both the sides led appropriate evidence on all the issues framed by the trial court.

The trial court, after considering the evidence on record, and after hearing both the sides, came to the conclusion that there is no merit in both the suits and accordingly, the trial court dismissed both the suits by the judgment and order dated 2.5.1981.

Aggrieved by the aforesaid order dated 2.5.1981, the original plaintiffs preferred Civil Appeal Nos.230 of 1981 and 231 of 1981.

During the pendency of the appeals, the appellate court remanded the matter to the trial court, with

suggested issues. One of the issues, upon remand, was whether the plaintiffs prove that the suit premises has been sub-let, and transferred to Ibrahimbhai for valuable consideration, as contended. Vide judgment dated 30.3.1995, it has been held by the trial court in paragraph 16 as under :-

" ... ...

There is no evidence whatsoever to show that the partnership deed is actually acted upon by the defendants. Hence, I can firmly come to the conclusion that under the guise of partnership deed, Exhibit 268, the exclusive possession of the suit premises, inclusive of even the legal possession has been transferred by the defendant No.1 to defendant No.4 and hence, I answer this issue accordingly.

... ..."

For the detailed reasons given in the judgment and order dated 20th February, 2003, the appellate court allowed the appeals preferred by the original plaintiffs and set aside the judgment dated 2.5.1981 passed by the trial court. However, the judgment delivered by the trial court on 30.3.1995, after remand, pending the appeals, was confirmed.

The defendants were directed by the appellate court to hand over the vacant physical possession of the suit premises on or before 30.4.2003 and costs were awarded all throughout. Mesne profits, as quantified in the judgment, were also directed to be paid from the date of the suits till the recovery of the physical possession.

So far as the sub-letting aspect is concerned, the appellate court considered the theory of partnership business put forward by the tenant. The Court has found that the said theory is not believable. In paragraph 41, it has been held by the appellate court as under :-

" ... ...

41. Exh.301 is ration card, exh.302 and exh. 303 Municipal tax receipts and exh.304 L.I.C. premium receipts are produced to show that said defendant Ibrahimbhai Ahemadji Javarawala is in

fact residing at some other places. This ration card is obtained on 27.4.1992, i.e. pending the appeal. And therefore it has very little evidentiary value. Exh.302 is tax receipts for the year 1992-93 for the premises bearing M.C. No.2427 and 2427 and it is shown in self-occupation of one Ahemadji Ramjuji. Exh. 301 ration card also bears this number 2427. But this tax receipt does not show that Ibrahimbhai, Ahemadbhai is in occupation. Tax receipt exh. 303 is for M.C. No.1442/1/1. It is for the year 1991-92. It is in self occupation of Ismail Ahemadji Javarawala. In other words it is also not in occupation of defendant Ibrahimbhai Ahmedji Javarawala. Receipt exh. 304 for L.I.C. premium is in the name of Ibrahimbhai Ahemadji Javarawala and in the address number is shown as 2427 near Bajapir, Jamalpur. But this document is also pending the appeal and it does not inspire confidence. Exh. 305 is Telephone bill at the address of 2427 and it is registered in the name of M/s.A.K. Javarawala. The telephone number is 398042. Then exh. 306 is telephone bill at the same address 2427 Jamalpur but in the name of F.I. Javarawala and the telephone number is 391044. So none of these two telephone numbers are in the name of defendant Ibrahimbhai Ahemadji Javarawala. As per this bill the premises was closed. Similarly bill exh. 308 dated 4.3.1991 also shows that this bill is issued for the period from August, 1990 to October, 1990 because the premises was closed and it is assessed on the basis of post consumption. Third bill exh. 309 dated 29.10.1992 shows that reading was not obtained due to civil disturbance. Exh. 273 is once again the order passed by Board of Nominees' Court, Ahmedabad on 7.7.89. It is a decree for Rs.53166/-. The argument is that if the business was not run such amount would not have been indebted. It is important to note that even as per the partition deed exh.268, new defendant Ibrahimbhai Javarawala was running his

business of Chindri and he was well set in the said business and said business was run elsewhere. What is necessary in the present suit is to establish that this firm was doing business in the suit premies. For the purpose of this suit proof that defendants were carrying on business is not sufficient. They have to establish that the business was run in the suit premises and nowhere else. So document relied by the defendants do not throw any such light on this material point in dispute. It may be recalled that as per the deed M.C. No.1441 and 1441/1 is given for the partnership.

... ..."

It has been found by the appellate court in paragraph 42 of the judgment that by producing the documents with List Exhibit 245, a feeble attempt is made to escape from the decree for eviction.

It has been found that the defendant has admitted that he has no documentary evidence whatsoever to prove his residence in the part of the suit premises. The finding of the appellate court in this behalf is in paragraph 43, which is as under :-

" ... ...

43. The learned trial Judge has clearly observed that defendant No.1 Ramdhan has admitted that he has no documentary evidence whatsoever to prove his residence in a part of the suit premises under these appeals. Exh. 221 is certified copy of the voters' list for Ward Isanpur for the year 1992-93. In M.C.No.45/1/1 at serial No.5291 to 5298 para of the defendant No.1 Ramdhan Gangaram and his family members appeared as voters. It must be noted that name in voters' list is always entered at the instance of Voter. If defendant No.1 is residing in the suit premises there is no explanation why he should enrol himself as a voter in his premises at Isanpur. Therefore, his say that he and his wife are residing in the suit premises and rest of his family members are residing at Isanpur cannot be believed. Exh. 222 is once again certified copy of the voters' list for the year 1998 of Gujarat Legislative Assembly Voters' List and it is of Serkhej

Constituency. Here also the name of the defendant and his family members are noted at serial No.187 to 192 at house No.46. It is nobody's case that it does not cover Isanpur area but in any case it is not pertaining to the suit premises situated in Jamalpur. Here also there is no explanation from the defendant. Then again, there is Exh.231 which is the certified copy of Voters' list and it is dated 16.12.83 and the name of defendant Ramdhan and his wife Parvatiben are noted at serial No.145 and 146.

... ..."

The appellate court has also further observed in paragraph 45 that defendant No.1 is not residing in the suit premises. Paragraph 45 of the appellate court's judgment reads as under :-

" ... ...

45. It must be kept in mind that it is not possible for the landlord to produce direct evidence about subletting and change of use. It will have to be gathered from attending circumstances and the conduct of the parties. As stated above when the defendant No.1 Ramdhan Gangaram is all the asserting that he is residing in the upper floor of the suit premises has no explanation why he is exercising his voter's right at his own premises at Isanpur. He further admits that he has absolutely no documentary evidence to show his residence at the suit premises. Therefore, detailed discussion made by the learned trial Judge disbelieving the residence of the defendant No.1 in the suit premises is fully justified.

... ..."

Detailed reasoning is also given by the appellate court in paragraphs 46, 47, 48 and 49 as to how the theory of so-called partnership is not believable. The appellate court, after appreciating the evidence, therefore, rightly found that the tenant has shifted his premises and has parted with the same in favour of a stranger and, therefore, finding of sub-letting is established and, therefore, against such a finding of fact, Mr.Gandhi is also not in a position to establish as to how the finding

of fact is revisable in a revision filed under Section 29(2) of the Rent Act. It cannot be said that the appellate court has committed any jurisdictional error in passing the impugned order. The revisions are required to be rejected and accordingly, they are rejected. Notices are discharged, with no orer as to costs.

(P.B. Majmudar, J.)

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(apj)